



March 28, 2016

By Email

The Honorable Dr. Shirley N. Weber, Chair
Assembly Committee on Elections and Redistricting
c/o Nicole Becker, consultant, & Scott Matsumoto, staff
1020 N Street, Room 365
Sacramento, CA 95814
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RE: Support for Assembly Bill 2466 (Weber)

Dear Assemblymember Weber and Members of the Committee:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) writes in support of Assembly Bill (AB) 2466, which will codify a recent court ruling on voter eligibility and eliminate residual ambiguity in state law regarding the impact a felony conviction has on voting. The current confusion surrounding voter eligibility for people with felony convictions, which unfortunately is not unique,¹ threatens the integrity of California's elections and results in the exclusion of eligible voters, a disproportionate number of whom are Black and other people of color. Enactment of AB 2466, however, would clarify existing California law on voter eligibility, bring the state's election laws into greater conformity with fundamental principles of an inclusive democracy, and allow California to continue to lead the nation in legislating to ensure equal opportunity to participate in the political process.²

¹ Indeed, while restoring voting rights in certain states can be straightforward, in far too many states, such as Alabama and Iowa, restoring voting rights is confusing, complicated, and, thus, effectively off-limits. *See, e.g.,* Gigi Douban, *New Law Could Simplify Restoring Voting Rights for Felons*, NPR, (Feb. 8, 2016), <https://news.wbhm.org/feature/2016/new-law-could-simplify-restoring-voting-rights-for-felons/> (explaining that unclear guidelines for defining what crimes disfranchise people with felony convictions results in subjective answers within all 67 Alabama counties); LDF Amicus Brief in *Kelli Jo Griffin v. Paul Pate*, No. 15-1661, at 20, (Iowa, Dec. 8, 2015), available at http://www.naacpldf.org/files/case_issue/Kelli%20Jo%20Griffin%20vs.%20Paul%20Pate%20Amicus%20Brief_0.pdf (explaining that regaining the right to vote in Iowa involves a comprehensive process that includes an application, a criminal background check, and providing proof of paid fines).

² California leads the nation in voting rights in many respects. For example, in 2002, California became the first and only state to pass its own Voting Rights Act, Elections Code §§ 14025 *et seq.* In the wake of *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), litigated by LDF, among others, which removed a core federal protection for millions of voters of color, California's Voting Rights Act remains a critical tool to challenge voting practices that dilute the ability of people



Since its founding in 1940, by Thurgood Marshall, the first African-American U.S. Supreme Court Justice, LDF has been a leader in the effort to secure, protect, and advance voting rights for African-Americans. LDF has worked to reform the nation's antiquated and discriminatory felony disfranchisement laws,³ which were adopted and proliferated in the late 19th century and during the era of Jim Crow to bar newly freed African-American citizens from exercising their right to vote based on felony crimes disproportionately prosecuted against them.⁴ That felony disfranchisement laws remain a lasting vestige of Jim Crow laws is reflected in the unfortunate reality that nationwide, one in 13 African-American people cannot vote due to disfranchisement policies.⁵ In California, three of every four men in prison are either African American, Latino, or Asian American. Thus, overly expansive or inconsistent interpretations of the law defining who can vote with a felony conviction risk further disfranchisement of communities of color. With AB 2466, the

of color to participate equally in the political process and elect their candidates of choice. California also is one of only four states to have enacted legislation, AB 420 (2011), that ends prison-based gerrymandering, the dilutive practice of counting incarcerated people as residents of the prison communities where they are held for purposes of redistricting, rather than where they actually lived before incarceration.

³ Indeed, LDF has litigated several challenges to discriminatory felony disfranchisement state laws that disproportionately deny voting rights to people of color with criminal records, including in Alabama, New York, and Washington State. *Chapman v. Gooden*, 974 So. 2d 972 (Ala. 2007); *Glasgow v. Allen*, No. 2:08-cv-801 (M.D. Ala. 2008); *Hayden v. Paterson*, 594 F.3d 150 (2d Cir. 2010); *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010).

In addition to litigation, LDF has advocated for policy reforms at the federal and state level to restore voting rights to previously incarcerated people. Most recently, LDF joined a coalition of advocates in support of the successful enactment of legislation in Maryland that restores voting rights to nearly 40,000 residents with felony convictions. See *In 50th Anniversary Year of Historic Voting Rights Act, LDF Urges Congress to Pass Federal Legislation to Restore Voting Opportunities to Formerly Incarcerated* (Mar. 18, 2015), available at <http://www.naacpldf.org/press-release/50th-anniversary-year-historic-voting-rights-act-ldf-urges-congress-pass-federal-legis>; *LDF Urges Maryland Legislature to Override Governor Hogan's Veto and Restore Voting Rights to People with Felony Convictions* (Jan. 20, 2016), available at <http://www.naacpldf.org/press-release/ldf-urges-maryland-legislature-override-governor-hogan%E2%80%99s-veto-and-restore-voting-right>.

⁴ See generally NAACP LDF, *Free the Vote: Unlocking Democracy in the Cells and on the Streets*, available at <http://www.naacpldf.org/files/publications/Free%20the%20Vote.pdf> (last visited Mar. 25, 2016).

⁵ Christopher Uggen and Sarah Shannon, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, at p. 1 (July 2012), http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf.



legislature has the power to reverse this trend and ensure that *no* eligible California voter is excluded from our democracy.

In 1976, California’s Constitution was amended to end permanent disfranchisement and prohibit only people who currently are “imprisoned or on parole for the conviction of a felony” from voting. The meaning of the terms “imprisoned” and “parole,” however, has been the subject of ongoing litigation and confusion, particularly as criminal justice reforms and sentencing laws fortunately have evolved.⁶ Most recently, voter eligibility was the subject of litigation following the passage of the Criminal Justice Realignment Act of 2011 (CJRA), which created three new categories of sentencing for people convicted of low-level felonies: mandatory supervision, post-release community supervision, and a term in county jail.

While courts consistently have interpreted the constitutional provision in favor of the enfranchisement of voters, California’s voter eligibility laws should not be subject to litigation and clarification every time a sentencing reform is enacted. Elections officials and the Secretary of State need guidance and clarity to ensure consistent application of voter eligibility laws and accurate maintenance of the voter file. Thus, AB 2466 would amend the state’s Elections Code to codify the recent decision in *Scott v. Bowen*,⁷ ensuring that more than 50,000 people under

⁶ There still is much work to be done with respect to criminal justice reform nationwide and in California. For example, within the past year, the disclosure of racially inflammatory text messages sent by San Francisco police officers raised legitimate questions about the scope of racial bias within that police department. *See Timothy Williams, Inquiry to Examine Racial Bias in the San Francisco Police*, N.Y. TIMES (May 7, 2015), available at <http://www.nytimes.com/2015/05/08/us/san-francisco-police-department-racial-bias-investigation.html>.

In 2015, the U.S. Department of Justice also entered into a settlement with the Los Angeles County Sherriff’s Department, after an investigation found patterns of excessive use of force, biased policing practices, including disparate policing among different housing communities, and unlawful searches and seizures. *See U.S. Department of Justice, Press Release, Justice Department and the Los Angeles County Sherriff’s Department Agree to Policing Reforms and Settlement of Police-Related Fair Housing Claims in the Antelope Valley* (Apr. 28, 2015), available at <https://www.justice.gov/opa/pr/justice-department-and-los-angeles-county-sheriffs-department-agree-policing-reforms-and>

⁷ Order (1) Granting Petition of Petitioners for Writ of Mandate and (2) Setting Hearing on Issue of Remedy, Case No. RG14-712570 (Cal., May 7, 2014), available at <https://www.brennancenter.org/sites/default/files/legal-work/2014%2005%2007%20Scott%20v%20Bowen%20ORDER.pdf> (last updated Aug. 2015).



mandatory and post-release community supervision can vote. AB 2466 also clarifies that the third category of CJRA sentencing – a term in county jail – likewise does not strip individuals of their fundamental right to vote. Finally, AB 2466 would clarify the information that courts provide to elections officials.

Enacting AB 2466 would help California join the growing list of more than 20 states that have legislatively ensured that people with criminal convictions, particularly Black and other people of color, have meaningful access to the franchise.⁸ Enacting AB 2466 also would demonstrate the California legislature's commitment to voting rights and to second chances for people with criminal convictions, and would serve as a powerful reaffirmation of the importance of the Voting Rights Act of 1965.⁹

Moreover, ensuring that eligible individuals with felony convictions can participate in the political process as they work, take care of their families, and otherwise reintegrate into their communities has public safety benefits for *all* communities. Indeed, research suggests that restoring the right to vote to eligible citizens reduces the likelihood that they will reoffend.¹⁰

For the above reasons, LDF supports AB 2466 and urges you to do everything within your power to secure the necessary votes in the State Assembly to pass this important legislation.

⁸ See Sentencing Project, *Felony Disenfranchisement: A Primer*, Tbl. 2, available at http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf (identifying more than 20 states with felony disenfranchisement changes between 1997-2015).

⁹ The nation's seminal civil rights legislation, the Voting Rights Act, was enacted to ensure that all citizens, including persons with felony convictions, have a voice in the political process.

¹⁰ See Ram Subramanian, et al., *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, Vera Institute of Justice (Dec. 2014), <http://www.vera.org/sites/default/files/resources/downloads/states-rethink-collateral-consequences-report-v3.pdf>; see also Christopher Uggen and Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193 (2004 - 2005), http://as.nyu.edu/docs/IO/3858/Voting_and_Subsequent_Crime_and_Arrest.pdf.

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Members of the Committee
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Thank you for considering this request. If you have any questions or concerns, please do not hesitate to contact Leah Aden at laden@naacpldf.org, or Monique Dixon at mdixon@naacpldf.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah C. Aden".

Leah C. Aden
Assistant Counsel
NAACP Legal Defense & Educational
Fund. Inc.

cc (by email): Raúl Macias, ACLU of California